

Lawful removal of the child - Belgium

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1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

Under Belgian law, the right to change the place of residence of a minor is a matter of parental authority. Therefore, only the holder (s) of parental authority over the child is/are authorised to change the place of residence of the child.

In principle, whatever the status of the parents, whether they live together or not, they exercise parental authority jointly in the interests of the child (see Articles 373 and 374 of the Civil Code).

However, if the parents decide to separate, it is possible to apply for a judicial waiver of the principle of joint exercise of parental authority. The exercise of parental authority entrusted to one of the parents by a judicial decision will then be considered exclusive. If parental authority is exercised exclusively by one of the parents, it may entail entrusting the parent who holds the rights with all the prerogatives of parental authority, including the choice of place of residence of the child. Therefore, the child may be taken to a different country without the consent of the other parent. In such circumstances, the parent who has no joint parental authority may be granted the right to personal relations nevertheless. The court may temper the exclusive exercise of parental authority by establishing exceptions that require the consent of the other parent for certain decisions related to the child. The choice of the child's residence may be one such decision, to be taken jointly if one of the parents holds exclusive parental authority.

It should also be noted that if the child is the subject of a protective ruling that involves the modification of the terms of the exercise of parental authority, that ruling must prevail. In such cases neither parent is allowed to take the child abroad.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

If parental authority is exercised jointly by both parents, the consent of both parents is required to change the place of residence of the child.

If parental authority is exercised exclusively by one of the parents, with an exception for certain decisions, such as designating the place of residence of the child, the consent of the other parent is required. Nevertheless, with respect to bona fide third parties, the existence of mutual parental agreement may be assumed.

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

In the absence of an agreement between the holders of parental authority concerning the place of residence of their child, it is the duty of the territorially competent court to authorize or not the child's removal to another state.

The competent court may be notified *a priori* by a parent exercising joint parental authority in anticipation of a decision with which he or she does not agree. A parent exercising joint parental authority may also lodge an *a posteriori* appeal to challenge a decision already taken by the other parent.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

Where parental authority is entrusted to only one of the parents, only the parent holding parental authority has the right to take the child to another state on holiday temporarily.

A parent who does not exercise parental authority over the child, but who has a right to personal relations, may only take the child abroad with the prior written consent of the parent with parental authority or express authorization issued by the competent court.

In the case of joint parental authority, when no decision has been taken to resolve the issue of the child's residence, both parents are allowed to travel abroad with the child. However, the place of residence of the child cannot be changed.

Finally, when a court ruling governs the child's accommodation arrangements, each parent is allowed to travel with the child only during their respective access period, unless otherwise expressly prohibited by the court.

In the latter two cases, it may be appropriate for the parent travelling with the child to obtain authorization to travel, signed by the other parent, in order to avoid any difficulties.

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